

Texas Civil Procedure

Subject Matter Jurisdiction is the court's power to hear a specific case.

Personal jurisdiction is the court's power over a party to the action, or a party's property.

Venue is the proper placement of a case within the judicial system.

There are two basic questions in order to determine whether a court has subject matter jurisdiction: (1) Whether the type of case or relief sought requires the case to be filed in a particular court or courts; and (2) If it is not, what is the amount in controversy?

The amount in controversy is the amount prayed for by the plaintiff in the complaint.

There are limits for the different Texas courts with respect to the amount in controversy: (1) Justice of the peace courts: \$10,000; (2) Constitutional County Courts: \$200.01 to \$10,000; (3) County Courts at Law (legislative): \$200.01 to \$100,000; and (4) District Courts: Greater than \$500.00 with no upper limit.

The formal requirements for a petition are five-fold: (1) The names of the parties and their residences; (2) Cause of action; (3) If unliquidated damages, there must be a statement that the damages are within the limits of the court; (4) Demand for judgment for all other relief deemed entitled to; and (5) Must be signed by the party or the party's attorney.

A pretrial amended pleading supersedes the prior pleading and must be complete in and of itself.

Seven days before trial a party must obtain a leave to amend a pleading.

Leave should be granted to file a trial amendment unless the defendant can prove (1) Surprise; or, (2) Prejudice.

A supplemental pleading is to reply to a defendant's defense. Supplemental pleadings add to but do not supersede the prior pleading.

A verified pleading on a sworn account must include: (1) An

itemized statement of the goods or services sold; (2) Reveal offsets to the account; (3) Must be supported by an affidavit stating that the claim is just and true and within the affiant's knowledge.

This applies when: an action is founded on an open account on which a systematic record has been kept and is supported by an affidavit, the account shall be taken as prima facie evidence of the claim, unless the party resisting the claim files a written denial under oath.

Thus a defendant files a written denial under oath to defend against a verified pleading on a sworn account.

In order to establish a right to an injunction the party must plead and prove: (1) Probable right to relief; (2) Probable injury; (3) that harm is imminent; (4) That without the injunction, the harm will be irreparable; and (5) No adequate remedy exists at law.

In order to have a valid temporary restraining order two requirements must be satisfied: (1) The application must be verified; and (2) The party obtaining a temporary restraining order must post bond in favor of the adverse party.

The four adequate grounds for personal jurisdiction are as follows: (1) Physical presence; (2) Domiciliary of the state; (3) Consent; or (4) Minimum contacts.

The three elements of the minimum contacts test are as follows: (1) The defendant must purposefully do some act or transaction in Texas; (2) The cause of action must arise from or be connect with this act; (3) It must not offend traditional notions of fair play and substantial justice.

In Texas, personal service is accomplished by personal delivery or registered or certified return receipt mail.

There are three alternative means of service: (1) Substitute service; (2) Citation by publication; and (3) Service on a corporation.

The elements of the Texas long arm statute are: (1) The defendant must be a non-resident; (2) The defendant must have no regular place of business in Texas; (3) The defendant must have no registered agent in Texas; and (4) the defendant must have been doing business in Texas.

The statute of limitation as per service of process does not begin to toll until the plaintiff has exercised actual diligence.

In Texas the defendant has until 10:00 A.M. on the first Monday after the expiration of 20 days to respond to service. Under the federal system the defendant merely gets 20 days to respond.

A special appearance must be filed before any other plea, pleading, or motion by the defendant, otherwise the defendant consents to jurisdiction. However, discovery does not waive any disputes to jurisdiction.

A special appearance must assert that the defendant is not amenable to service of process and deny all allegations therein; it must also be verified.

Venue in Texas is proper: (1) In the county in which all or a substantial part of the events or omissions giving rise to the claim occurred; (2) The county of the defendant's residence or principal office; (3) if neither of the above apply, then in the county where the plaintiff permanently resides.

Where there are multiple defendants, then venue is proper wherever it would be proper for any single defendant.

There are two primary permissive venue exceptions you should be familiar with: (1) Consumer good warranty breach--the action may be brought in the county of the plaintiff's residence at the time the cause accrued; (2) Suit on a written contract can be brought in the county where the Defendant is to perform.

A motion to transfer venue must be filed before any other plea or pleading other than a special exception.

If there are multiple defendants, and one files a pleading other than a motion to transfer venue, the other defendants may still file a motion to transfer venue.

A motion to transfer venue must assert: (1) That the action should be transferred to another specified county of proper venue; (2) That the current county is not proper or that venue is more convenient in another county; (3) It must state the legal and factual basis for the transfer; and (4) It must request a transfer to a specific county of proper venue.

The defendant has the burden of proof on a motion to transfer venue. Furthermore, a motion to transfer venue must be accompanied by supporting affidavits. Also, a motion to transfer venue need not be verified.

45 days notice is required for a motion to transfer venue except on leave of court.

A plaintiff must file a response to a motion to transfer venue at least 30 days prior to the hearing on the motion to transfer venue.

A motion to Change venue requires: (1) the defendant's affidavit, and the affidavits of three credible persons who are residents of the county of suit; and (2) The affidavits must assert that there is such a prejudice against the defendant such that he cannot obtain a fair and impartial trial in the current venue.

A motion to change venue can be filed at any time in the proceeding.

A motion to quash is filed to challenge defective jurisdictional allegations or defects in the service of process. If the motion to quash is granted the defendant does not need to be re-served.

The purpose of a plea in abatement is to challenge the plaintiff's pleadings by alleging facts which arise outside the petition which justify the suspension or dismissal of the case.

A plea in abatement must be based upon: (1) A defect in the parties (such as capacity, non-joinder, or improper party); (2) A defect in the petition's allegation (such as another action is pending).

A party may object to the opposing party's pleading via special exceptions. These special exceptions are based upon defects of substance or form.

In a general denial the defendant denies each and every allegation in the plaintiff's original petition.

When a defendant wants to challenge a plaintiff's assertion that a condition precedent has been performed or has occurred, then he must file a special denial.

There are four affirmative defenses which must be verified: (1)

Denial of the plaintiff's properly filed sworn account action;
(2) Denial that the defendant is a partnership or corporation;
(3) that there is another suit pending in Texas with the same parties and claim; and, (4) That there is a defect of the parties.

An affirmative defense is any matter that provides an independent reason that will totally or partially bar the plaintiff from recovering, even if the allegations are true.

A case can only be removed to federal court if the case could have been filed in federal court originally.

Removal to federal court is only available to the defendant, if there are multiple defendants then all must join in the removal.

The requirements of diversity citizenship are: (1) The parties must be diverse (complete diversity); and (2) There must be a sufficient amount in controversy (over \$75,000).

Remember that complete diversity is required for removal, that means that each plaintiff must be diverse from each defendant (it is different in the case of class actions then only the named parties need be diverse).

To determine citizenship, you must determine the entity whose citizenship you are attempting to determine: (1) For individuals it is domicile; (2) For corporations it is the state of incorporation and the state of principal office which is the nerve center test. Note that for Partnerships, you count the citizenship of each partner, and for LLC's you count each member of the company. (much easier to destroy complete diversity in such cases).

If there is complete diversity of citizenship of all the parties, and at least one defendant is a citizen of the forum state, they may not remove. (proper jurisdiction in the state court).

The deadline for removal under diversity of citizenship is one year from the date of filing (or commencement of the case).

There are four steps for removal: (1) The defendant must file a verified notice of removal in federal court, signed under Federal Rule of Civil Procedure 11; (2) The notice must contain a short statement of why the case should be removed; (3) It must be filed within 30 days after state service; and (4) It must

give written notice to all adverse parties and be filed with the state court.

If the defendant did not file an answer in state court before filing the notice of removal, then in Texas the defendant must file his answer within 20 days after receipt of the initial state court pleading. In federal court the defendant must file his answer within five days after filing the notice of removal, whichever period is longer controls.

A plaintiff may challenge a defendant's motion to remove by filing a motion to remand to state court.

The plaintiff must allege in the motion to remand that: (1) The case could not have been originally brought in federal court; or, (2) That there is a defect in the removal procedure.

A motion to remand must be filed within 30 days if it is based upon the defect in procedure. If it is not based on such then it can be at any time before a final judgment has been rendered.

The plaintiff may use permissive joinder of claims against a single defendant, even if the causes of action are otherwise unrelated. (this is usually for purposes of judicial economy, or to avoid res judicata).

On the otherhand, a defendant may use permissive joinder of claims when setting forth counterclaims (because in this case they essentially become a plaintiff).

There are five requirements for a counterclaim to be compulsory: (1) It must be within the jurisdiction of the court; (2) It must not be the subject of a pending action; (3) It must arise out of the same transaction or occurrence; (4) It must be a claim that the pleader has a time of filing; (5) It must not require the presence of third parties over whom the court cannot acquire jurisdiction.

If a compulsory counterclaim is not asserted then its subject matter is barred.

A permissive counterclaim may be filed in the same suit or in a second suit against the plaintiff. (so original suit for plaintiff, counterclaim for defendant).

A cross-claim is a claim by one party against a co-party.

A cross-claim must arise out of the same transaction or occurrence that is the subject of the original action. Cross-claims are generally permissive.

severance is proper when the controversy involves multiple claims, one of which could be asserted in a separate suit and does not involve the same facts and issues in the other claims.

A bifurcated trial will be ordered when there are distinct and complex issues, that if tried together, might create for the jury. For example--claims for both actual and punitive damages.

The requirements for permissive joinder of parties is as follows: (1) Claim for or against the party is asserted, jointly, severally, or in the alternative; (2) the claims asserted arise out of the same transaction or occurrence; (3) there are common questions of fact and law.

When the defendant believes that a third party is at fault then he may file a third party claim alleging that the third party is liable for all or part of the original claim.

The procedure for a third party claim is as follows: File within 30 days after serving the original answer, or obtain leave on motion stating the claim, the basis, and the relationship of the primary claim; and give proper notice to all parties.

A common example of compulsory joinder of parties is when there are persons who have a joint interest in the subject matter of the lawsuit, but are not parties.

A motion to intervene is filed in order to allow a party to voluntarily seek to become a party in the suit to protect his own rights.

The first type of class for requirements to certify a class action are as follows: (1) The class is so numerous that joinder of all parties is impractical; (2) Questions of law or fact common to the class; (3) The claims or defenses of the representative parties are typical to the class; (4) and the representative parties will fairly and adequately represent the interests of the class.

The second class of requirements to certify a class action include one of the following three: (1) Prosecution of separate actions would create a risk of inconsistent adjudications; (2) the party opposing the class has acted or refused to act on

grounds generally applicable to the class; (3) The court finds that common questions predominate and that class action is superior to other methods of adjudication.

For discovery, any matter that is not privileged and is relevant to the case is discoverable.

It is not a ground for objection that evidence will be inadmissible at trial. If the information appears reasonably calculated to lead to the discovery of admissible evidence.

Note that trial witnesses must be disclosed at discovery, but impeachment or rebuttal witnesses do not. Rather the party must show good cause for nondisclosure or that the opposing party will suffer no prejudice or surprise by withholding such information.

Any documents or tangible things that are within the person's possession, custody, or control must be produced upon request.

There are three classifications of expert witnesses: (1) Testifying expert witnesses; (2) Consulting but non-testifying experts; and (3) Reviewed consulting expert witnesses.

In the case of a purely consulting expert, the identity, mental impressions, and opinions of such a witness are not discoverable.

On the other hand, with respect to testifying or reviewed testifying experts the following information is discoverable: (1) Identity; (2) Subject matter of testimony; (3) mental impressions and opinions; (4) Documents which are prepared in anticipation of testimony (work product); (5) Evidence of bias of the witness.

The time limits to respond to requests for disclosure regarding experts are as follows: (1) Parties seeking affirmative relief must respond 90 days before the end of discovery period; (2) All other parties 60 days.

A party seeking affirmative relief must make their experts available for deposition in a reasonably prompt fashion after designation, unless a report concerning the expert's opinions and observations is provided.

Work product is any material prepared or mental impressions developed in anticipation of litigation or for trial by or for a

party or a party's representative.

The first step to claim privilege as a basis for refusing to respond to interrogatories is that a withholding statement, stating that information has been withheld, for which request, and the privilege asserted.

The second step to claim privilege as a basis for refusing to respond to interrogatories is the response, where the party seeking discovery may request that the withholding party identify the information withheld.

The third step to claim privilege as a basis for refusing to respond to interrogatories is the privilege log, where within 15 days, the withholding party must describe information or materials withheld and assert a specific privilege. The party must also establish a prima facie case for privilege by testimony or affidavit.

The objecting party has the burden of proof for the validity of objections to interrogatories based upon privilege.

If a court orders answers that a party believes are protected by privilege, then the party should seek a writ of mandamus.

If a defendant inadvertently discloses privileged information, the privilege is not waived as long as within 10 days of discovering the production, the party amends the response and states the privilege asserted.

A party objects to discovery by: (1) Making an objection in writing within time for response, otherwise the objection is waived; and (2) states legal or factual basis for the objection, and this must be in good faith.

A party would seek a protective order in discovery in order to ask that the discovery be limited in the interest of justice to protect the party from undue burden and unnecessary expense, harassment, or annoyance.

The time limits for supplementing discovery are that it must be done reasonably promptly, not less than 30 days before trial, otherwise it is presumed as not reasonably prompt.

A level 1 discovery plan is: (1) Where duration begins when the suit is filed, and ends 30 days before trial; (2) No more than 6 hours of deposition time, however the parties can agree to

expand up to 10 hours; (3) no more than 25 interrogatories. The ceiling for relief of a level 1 plan is \$50,000.

The duration of a level 2 plan is that it starts when the suit is filed, and continues until the earlier of 30 days before trial or 9 months after the earlier of the date of the first deposition or due date of the first response to discovery.

The depositions limits of a level 2 discovery plan are: No more than 50 hours for opposing parties, their experts, and people under their control, plus 6 hours for every expert beyond 2. There is no limit for parties not under control. The interrogatory limits under a level 2 discovery plan is 25.

if the time limit for the deposition has expired, then the party or witness may suspend the deposition.

A level 3 discovery plan applies when a court orders it. This can be done on motion or sua sponte (of the court's own accord).

There are four types of information that may be obtained using a request for disclosure: (1) Correct names of the parties; (2) Names, addresses, and telephone numbers of potential witnesses; (3) Legal theories and general factual basis of responding party's claims or defenses; (4) amount and method of calculating damages; (5) Witness statements; (6) Settlement agreements.

A party must respond to a request for disclosure by: (1) Plaintiff--within 30 days after service of the request; (2) Defendant--30 days, except if defendant was served with the request before answer was due, then 50 days. This is the 30/50 rule.

The purpose of a request for production is to obtain documents. Note that a subpoena is required for non-parties.

The time limit to responding to a request for production: 30/50 rule.

Production of a document authenticates a document for use against a producing party except when the producing party objects within 10 days after receiving knowledge that the document will be used.

The limits on testing items produced are that the item may be obtained, but may not be destroyed or materially altered unless such activity was previously authorized by the court.

If a party wishes to gain entry to property then the party must file a request or motion for entry. The standard response times applicable before the answer is due is the 30/50 rule.

An interrogatory is a written question to a party in the suit, the answers must be used only against that party, and the answers must be signed under oath.

Requests for admissions are requests that the other party admit the truth of any matter within the scope of discovery.

A responding party must answer admissions by either specifically admitting or denying them, or explain in detail any reason why the request cannot be admitted or denied.

The time limits for responses to admissions is the 30/50 rule. Note that untimely responses are deemed admitted.

The effect of an admission is that a matter admitted is conclusively established as to the party making the admission. A party may withdraw an admission by leave of court, if the party shows good cause and the court finds the parties relying on the admission will not be unduly prejudiced. This is for both actual and deemed admissions.

Notice of intent to take an oral deposition must be served in a reasonable time before it is to be taken.

The notice of intent to take deposition must contain the name of the deponent, and a reasonable time and place for the deposition. In the case of corporate deponents, the party need not give the name of the deponent, but ask the organization to designate the agent.

A deposition may be taken: (1) The county of the deponent's residence; (2) The county where the deponent is employed; (3) the county where the deponent was served with the subpoena (if non-party); (4) if party, the county where suit is filed.

Appearance is required for a deposition when the county of appearance is not more than 150 miles from where the person resides or is served (note that for criminal procedure this doesn't apply).

A subpoena is required for a deposition if the deponent is a non-party witness. Otherwise, the notice has the effect of a

subpoena.

A subpoena for a deposition may also compel production of documents or things at the deposition because the same rules apply as do for a request of production.

If a deponent objects to the request to produce tangible things then the deponent must file a motion to quash or a motion for a protective order.

Depositions may be taken by alternative means if the party gives reasonable notice.

There are only three objections which are proper at a deposition: (1) Objection, leading; (2) Objection, form (form of question); (3) Objection, non-responsive.

An attorney may confer with a witness during a deposition only to identify a privilege to be protected.

An attorney may instruct a witness not to answer a question during depositions--only if doing so is necessary to preserve a privilege, comply with a court order, or to protect the witness from abusive questions or questions that require a misleading answer..there are no other grounds.

A deposition may be taken before a suit is filed by filing a petition for deposition before suit. This must allege: (1) Anticipation of a suit; (2) Subject matter of prospective suit and petitioner's interest; (3) Names and contact information of persons expected to be adverse.

The party who hired an expert is the one who pays the fee of an expert witness at the deposition.

If attempts to resolve a discovery dispute fail, then a motion to compel may be filed, note that sanctions may also be requested.

A motion to compel a medical exam of another party may be filed after showing good cause and that the medical condition is in controversy, no later than 30 days before the end of the discovery period.

A court may instruct a jury to infer that the evidence is unfavorable to the party that could have produced it and did not if a party fails to produce evidence under the party's

reasonable control and was reasonably available to it.

In order to take a default judgment the plaintiff must show: (1) that the court has subject matter jurisdiction; (2) Jurisdiction over the defendant was by proper service of process; (3) Allege the cause of action; (4) Defendant has not filed an answer and the time to do so has expired; (5) Return of citation has been on file for 10 days exclusive of the day of filing the citation and the day of the default judgment.

If the plaintiff fails to seek a default judgement the defendant may still file an answer even if it is not timely.

In a default judgment the defendant admits all liability issues, however, unliquidated damages must still be proven.

A defendant must do the following to set aside a default judgment: (1) Within 30 days; (2) Show that failure to answer was not intentional or the result of conscious indifference, but rather mistake or accident; (3) show meritorious defense; (4) No delay or injury to the plaintiff by granting new trial.

In order to set aside a default judgment by a restricted appeal to the court of appeals it must be shown that: (1) Within 6 months; (2) must demonstrate that defendant did not participate in the trial court below and did not file any post-judgment motion; (2) that there is error on the face of the record.

In order to set aside a default judgment through equitable bill of review it must be shown that: (1) Within 4 years, and in the same court: (2) A meritorious defense; (3) Which the defendant was prevented from asserted by fraud, accident, wrongful act of the plaintiff, or official mistake; and (4) Unmixed with any negligence of the defendant.

If a bill of revive is based on a total lack of service of process the defendant need only prove a lack of service as due process requires that traditional requirements be excused.

A plaintiff may file a nonsuit at any time before the plaintiff has introduced all of his evidence. The effect of a nonsuit is that the case is dismissed without prejudice.

There are two grounds for summary judgment motion: (1) no genuine issue of material fact; and , (2) No evidence.

The moving party must show sufficient conclusive facts that it

is entitled to Summary judgment, thus the moving party has the burden of proof.

The requirements for a no evidence summary judgment is that after adequate discovery time, there must be specifically shown that no evidence of one or more essential elements of a claim or defense is to be had.

In order to avoid a no evidence summary judgment the opposing party must show evidence raising a genuine issue of material fact.

The procedure for summary judgment is: (1) At least 21 days before the hearing, unless leave is granted; (2) no oral testimony at the hearing; (3) Evidence limited to affidavits and all types of discovery.

The requirements for affidavits for summary judgment are as follows: (1) made on personal knowledge of the affiant; (2) Affirmatively show that the affiant is competent to testify; (3) and state admissible facts.

Rule 11 agreement must have the following completed in order to be a valid settlement: It must be in writing, signed, and filed as part of the record or be made in open court and entered of record.

The court must approve a settlement if a minor is involved.

the court will appoint a guardian ad litem where there is a conflict between a minor and a Minor's next friend or guardian.

The offering party recovers litigation costs from the rejecting party if a settlement offer is made and rejected, and the judgment is significantly less favorable.

Significantly less favorable means in the context of comparing settlement offers and judgments: (1) For the plaintiff less than 80% of the judgment; (2) for the Defendant more than 120%.

the limits on litigation costs for rejected settlement offers is that costs incurred after the date of the offer was rejected, including court costs, and reasonable attorney fees, and fees for no more than 2 testifying experts.

The time to limit a request for a jury trial in a Texas civil case is 30 days before trial. In federal court it is at any

time, but no later than 10 days after service of the last pleading directed to a triable issue.

The procedure to request a jury trial in a civilian case is that it must be in writing, with a jury fee or affidavit of inability (poor suckers).

A motion of continuance must be: (1) in writing; (2) under oath; (3) and show sufficient cause supported by an affidavit unless all parties agree.

When a judge's grant or denial of a motion for continuance will be disturbed only when there is a clear abuse of discretion.

The purpose of a motion in limine is to prevent the opposing counsel from mentioning or asking questions about a matter without approaching the judge for a final ruling.

If there is error then to preserve an error when opposing counsel disregards a motion in limine the objecting party must: (1) object timely; (2) obtain order by the court disallowing the evidence (motion to strike); (3) Have the court instruct the jury to disregard the statement.

A jury panel may be shuffled only once and this must be done before voir dire.

there are four reasons to challenge a juror for cause: (1) The juror is interested in the subject matter of the case; (2) Juror is a witness; (3) Juror has a bias or prejudice; (4) The juror is related to a party.

If a juror has expressed some biased, he is not necessarily disqualified as a matter of law. Additional voir dire may be taken and establish that the person will be fair and objective.

In order to preserve error in a challenge for cause; before peremptory challenges are made, you must state that it will exhaust all of your peremptory challenges and that specific objectionable jurors will remain on the list.

The limit of peremptory challenges available to each side is: (1) 6 in district court; (2) 3 in county court; and the same is true if there are multiple parties, unless co-parties are antagonistic on any issue to be submitted to the jury, in which case 6 for each co-party.

A Batson challenge is an objection that a jury panelist was excluded because of some prohibited classification namely race, ethnicity, or gender.

The Rule of exclusion (shortened to the Rule) states that the court swears witnesses on both sides and then removes them from the courtroom so that they cannot hear the testimony of other witnesses.

There are exemptions from the rule: (1) Parties and spouses thereof; (2) Officers of non-person parties (corporations) who are the designated representatives; (3) and a person whose presence is shown by the party to be essential to the presentation of the case; or (4) A party whose presence is allowed pursuant to statute.

The sanctions for violating THE RULE: (1) Exclusion of the testimony in whole or part; (2) Holding the witness in contempt; (3) Allowing the witness to testify.

The standard of review for sanctions arising from violations of THE RULE: Abuse of discretion.

A directed verdict is the method used to present a party's argument that there are no controversial fact issues for the jury's determination.

A party may move for a directed verdict when: (1) an opponent rests; (2) an opponent closes; (3) all parties close.

There are two grounds necessary for a plaintiff to successfully move for a directed verdict: (1) Plaintiff has conclusively proven all elements of one ground of recovery; and (2) The defendant has failed to produce any evidence on one.

The grounds that the defendant has to successfully move for a direct verdict are: (1) Defendant has conclusively proven all elements of one ground of defense; or, (2) The plaintiff has failed to produce any evidence on at least one element of each ground of recovery.

In order to preserve error on the jury charge: (1) All complaints must be made before the charge is read to the jury and outside of their presence; (2) All complaints must be ruled on by the judge.

The three steps for objections to be submitted but on defective

matters: (1) Object to the specific portion of the charge; (2) State the basis for the objection; (3) Obtain a ruling.

There are two types of complaints regarding jury charges: (1) Omissions; and (2) Submitted but defective.

The minimum amount of jurors that must agree are as follows: (1) District Court: 10 of 12; (2) County Court: 5 of 6; (3) Justice of the Peace Court: 5 of 6.

Exemplary damages are not available when there is a non-unanimous verdict.

A losing party may request a jury poll after the jury returns a verdict. The purpose of this is to make sure that no juror was coerced and it was, in fact, their verdict.

A judge may disregard a jury's findings when there is legally insufficient evidence to support a finding; or, where the contrary evidence is conclusive.

The purpose of a motion for judgment notwithstanding the verdict is: (1) to challenge the legal sufficiency of the evidence; and (2) To assert that the evidence conclusively establishes a fact opposite of the jury's finding.

The time limit for a motion for judgment notwithstanding the verdict is after the court has entered the judgment it becomes final.

In an evidentiary bench trial, a party learns of the basis of the courts decision by requesting that the judge make findings of fact and conclusions of law.

The deadline to request that a judge make findings of fact and conclusions of law after judgment is rendered in an evidentiary bench trial is within 20 days after the final judgment is signed. The judge must answer within 20 days after the request.

A motion for a new trial may be based on any alleged error on part of the trial court.

The matters for which a motion for a new trial is a prerequisite for appeal are as follows: (1) complaint of inadequate or excessive jury damages; (2) complaint on evidence for jury misconduct, newly discovered evidence, or failure to set aside judgement by default; (3) Complaint of factual insufficiency;

(4) Complaint that jury findings are against the great weight and sufficiency of the evidence; and (5) An incurable jury argument.

The time limit to file a motion for a new trial is 30 days after judgment is signed. The time limit of the trial court's plenary power to set aside, modify, or amend the judgment sua sponte is 30 days following the signing of the FINAL judgment.

A final judgment is a judgment that disposes of all parties and all issues.

The following interlocutory orders are appealable: (1) Class certification; (2) Temporary injunctions; (3) Special appearances (except under the family code); (4) Appointment of a receiver or trustee.

An appeal is perfected when a written notice of appeal is filed with the trial court clerk.

A notice of appeal must contain the following: (1)

Identification of the trial court and the case's trial court number and style; (2) Date of the judgment or order appealed from; (3) statement that the party desires to appeal; (4) Identify the court to which the appeal is taken; (5) A statement of the name of each party filing the notice.

The time limit for an appeal when there is no motion for a new trial is 30 days from the judgement signing; when there is a motion for new trial it's 90 days.

Perfecting an appeal does not suspend the enforcement of the judgment pending appeal.

In order to suspend enforcement on a judgment pending appeal a bond must be filed with the trial court.

A court of appeals must affirm a lower court when there is no error or when the error is insignificant to meet the standard of reversible error.

The most common disposition of reversed cases is that the case is remanded for a new trial.

A court of appeals may reverse the judgment of a trial court and render judgment instead of a new trial.

When mediation is ordered, the court may impose sanctions when

the party or parties refuse to participate; but not when the refusal to settle or to mediate is in good faith.

The only effective time that all parties must consent to a settlement agreement is that the parties must consent at the time when the judgment is rendered.

Statements made in mediation are not admissible in court.

A mediator may not be compelled to disclose information, unless the parties agree otherwise.